

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICHOLAS VOVOS,

Plaintiff,

v.

D. MARTINEZ,

Defendant.

No. 2:21-cv-00837-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On August 7, 2023, the Magistrate Judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within the time specified therein. No objections to the findings and recommendations have been filed.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court . . .”). Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

1 “When prison officials use excessive force against prisoners, they violate the inmates’
2 Eighth Amendment right to be free from cruel and unusual punishment.” *Clement v. Gomez*,
3 298 F.3d 898, 903 (9th Cir. 2002). However, “[i]t is obduracy and wantonness, not inadvertence
4 or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual
5 Punishments Clause[.]” *Whitley v. Albers*, 475 U.S. 312, 319 (1986). Because plaintiff’s alleged
6 fall and injuries were a result of an accident, plaintiff does not state a claim for excessive force
7 under the Eighth Amendment.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The findings and recommendations filed August 7, 2023, are adopted in full;
- 10 2. Defendant’s unopposed motion to dismiss, ECF No. 26, is GRANTED;
- 11 3. Plaintiff’s excessive force claim against Defendant Martinez is DISMISSED;
- 12 4. This action proceeds against Defendant Martinez on Plaintiff’s Eighth Amendment
13 claims relating to safety and health only;
- 14 5. Defendant Martinez shall file an answer to Plaintiff’s complaint within 30 days of
15 the date of this order; and
- 16 6. This matter is referred back to the Magistrate Judge for further pre-trial
17 proceedings.

18 DATED: September 25, 2023.

19 
20 _____
21 CHIEF UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28